



To the Honorable Council
City of Norfolk, Virginia

January 8, 2013

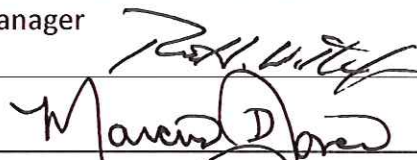
From: Kristen M. Lentz, P.E., Director of Utilities

Subject: Ordinance – Agreement -
Bay Breeze Point Homeowners
Association - Pleasant Avenue and
30th Bay Street

Reviewed: Ronald H. Williams, Jr., Assistant City
Manager

Ward/Superward: 5/6

Approved:



Marcus D. Jones, City Manager

Item Number:

R-8

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Bay Breeze Point Homeowners Association
Agreement Location: Pleasant Avenue and 30th Bay Street at the
entrance to Bay Breeze Point

III. **Description**

This agenda item is to adopt an Ordinance approving the Agreement for the Use of City Property by the Bay Breeze Point Homeowners Association (HOA) at Pleasant Avenue and 30th Bay Street.

IV. **Analysis**

The Agreement will allow the Bay Breeze Point HOA use of City-owned property for the purpose of maintaining the street-facing side of the City-owned masonry wall and the HOA-owned landscaping and improvements located on the property. The masonry wall and other improvements are adjacent to the City's Pump Station 117. The original developer constructed the masonry wall and dedicated the property for the pump station to the City.

V. **Financial Impact**

- The City has not requested payment from the HOA for this Agreement.
- The HOA agrees to indemnify, defend and hold the City harmless from and against any and all claims, loss, damage, injury and liability.
- The HOA shall maintain public liability insurance in the amount of at least \$1,000,000.
- The HOA will repair any damage that it shall do to the property.

- The City will take all reasonable measures to repair any damage done while performing work at this location.

VI. Environmental

No negative environmental impacts are expected.

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

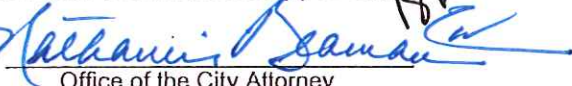
N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Utilities, Real Estate and the City Attorney's Office.

Supporting Material from the City Attorney's Office:

- Ordinance
- Agreement for the Use of City Property

Form and Correctness Approval: By 
Office of the City Attorney

Contents Approved:

By 
DEPT.:

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE CITY OF NORFOLK AND BAY BREEZE POINT HOMEOWNERS ASSOCIATION FOR THE USE OF CERTAIN CITY OWNED PROPERTY LOCATED AT PLEASANT AVENUE AND 30TH BAY STREET.

- - -

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Agreement to use City Property ("Agreement") between the City of Norfolk ("City") and Bay Breeze Point Homeowners Association ("HOA"), a copy of which is attached hereto as Exhibit A, whereby the City grants to HOA the right to enter upon and use certain City-owned property ("Property") located at Pleasant Avenue and 30th Bay Street, which Property is shown on Exhibit B, for purpose of maintaining the street-facing side of the City-owned masonry wall and HOA-owned landscaping and improvements located on the Property, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Agreement on behalf of the City and to do all things necessary and proper to carry out the terms of the Agreement.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Agreement as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after its adoption.

AGREEMENT FOR THE USE OF CITY PROPERTY

THIS AGREEMENT, made this ____ day of July, 2012, by and between the CITY OF NORFOLK, a municipal corporation of the Commonwealth of Virginia ("City"), Grantor, and BAY BREEZE POINT HOMEOWNERS ASSOCIATION ("HOA"), Grantee.

WITNESSETH:

That for and in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the City grants to HOA the right to enter upon and use certain city-owned property located at Pleasant Avenue and 30th Bay Street, being the City's pump station site ("Property"), for the purpose of maintaining the street-facing side of the City-owned masonry wall and HOA-owned landscaping and improvements located on the Property.

This Agreement shall be subject to the following terms and conditions:

1. The HOA shall have the authority to enter upon the Property from time to time as may be necessary for the purpose of maintaining the street-facing side of the City-owned masonry wall and HOA-owned landscaping and improvements located on the Property.

2. Prior to entering upon the Property for the purposes of maintaining the street-facing side of the City-owned masonry wall and/or the installed improvements on the Property, the HOA shall first notify the Director of Utilities of the anticipated dates and times of such entry. Director of Utilities notification is not required for HOA routine maintenance of HOA-owned landscaping and improvements. If the HOA

intends to install additional improvements or replace existing improvements, the Director of Utilities will be notified and endorsement obtained.

3. The City shall have access to the Property at all times.

4. The HOA shall not engage in any activities on the property except for those specifically set forth above.

5. The HOA expressly agrees to indemnify, defend and hold the City harmless from and against any and all claims, loss, damage, injury, and liability, however caused, resulting from, arising out of, or in any way connected with the HOA's use of the Property.

6. The HOA at its own cost and expense, shall take out and keep in full force and effect public liability insurance in some company authorized to do business in the Commonwealth of Virginia, insuring them and naming the City of Norfolk as an additional insured party in the amount of at least \$1,000,000.00 per person/per injury/per occurrence, and \$2,000,000.00 aggregate, against liability from any and all claims, actions and suits that may be asserted or brought against the City of Norfolk and/or the HOA, and its successors and assigns, for any injury to or death of any person or persons or for any damage to or destruction of property resulting from the HOA's use of the Property, evidence of such insurance shall be filed with the Risk Manager, Department of Finance, City of Norfolk.

7. The HOA shall repair any damage that it shall do to the Property during the term of this Agreement.

8. The City shall notify the HOA prior to performing work that could result in damages to HOA-owned landscaping and improvements located on the Property during the term of this Agreement. This prior notification will provide the HOA and the City time to develop an approach that will minimize damages to the HOA-owned landscaping and improvements created by the planned City action(s). In the event any of the HOA-owned landscaping or improvements located on the Property are damaged by the City, its officers, agents, employees, or contractors, during the term of this Agreement, the City will take all reasonable measures to repair such damage and place any such landscaping or improvements in their original condition.

9. By entering upon the Property for the purposes aforesaid, the HOA and its officers, agents, employees, and volunteers assume any and all risk of personal injury or property damage.

10. This Agreement shall be in effect until terminated. Further, this agreement may be terminated by either party at any time upon giving fourteen (14) days written notice of such termination.

WITNESS the following duly authorized signatures:

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the Commonwealth of Virginia, whose term of office expires on the _____ day of _____, _____, do hereby certify that Marcus D. Jones, City Manager, and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this _____ day of _____, 2012.

Notary Public: _____

Registration No.: _____

Contents Approved:

Director of Utilities

Form and Correctness Approved:

Deputy City Attorney

BAY BREEZE POINT HOMEOWNERS
ASSOCIATION

By: _____

Title: _____

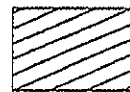
COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in
the Commonwealth of Virginia, whose term of office expires on the ____ day of
_____, 20____, do hereby certify that
_____(title) whose
name is signed on behalf of Breeze Point Homeowners Association to the foregoing
Agreement, has acknowledged the same before me in my City and State aforesaid.
He/She is personally known to me or has produced a driver's license as identification.

Given under my hand this ____ day of _____, 2012.

Notary Public: _____

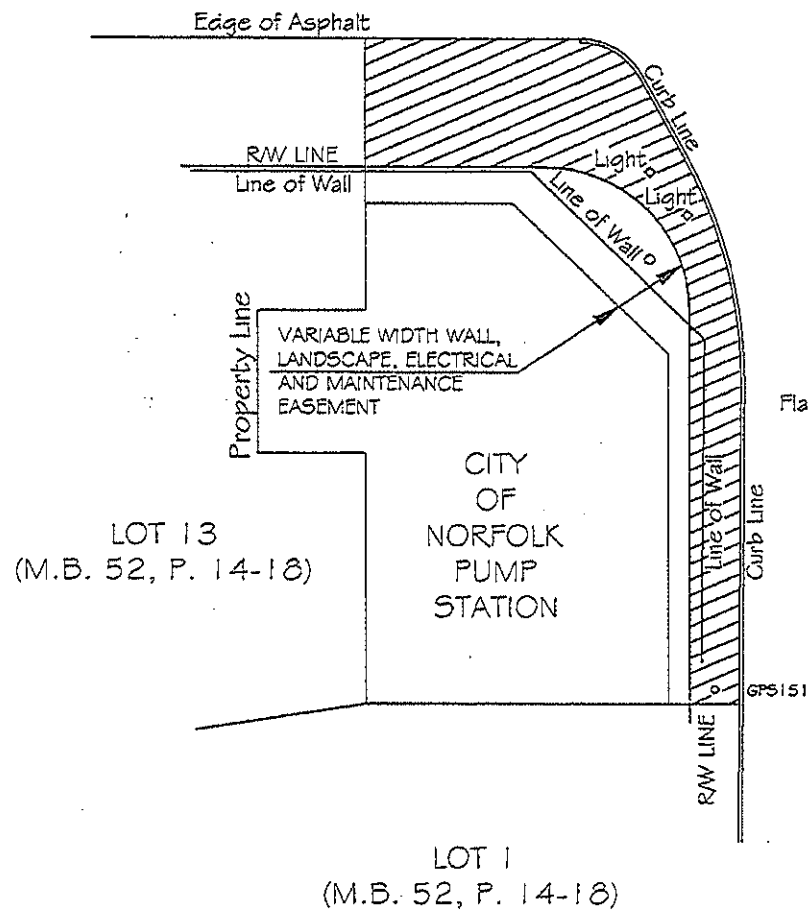
Registration No.: _____



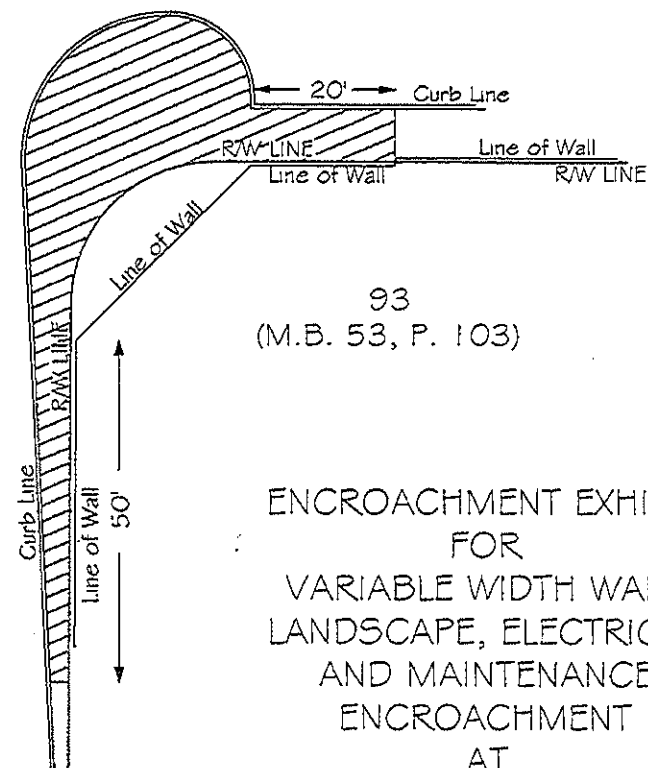
VARIABLE WIDTH WALL,
LANDSCAPE, ELECTRICAL
AND MAINTENANCE
ENCROACHMENT

1" = 25'

30TH BAY STREET
(45' R/W)



PLEASANT AVENUE
(VARIABLE R/W)



93
(M.B. 53, P. 103)

ENCROACHMENT EXHIBIT
FOR
VARIABLE WIDTH WALL,
LANDSCAPE, ELECTRICAL
AND MAINTENANCE
ENCROACHMENT
AT
PLEASANT AVENUE AND
30TH BAY STREET

November, 2010
Scale: 1" = 25'